Supreme Court, U.S.
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IN THE

Supreme Court of the United States

October Term, 1979
No. 79-1383

RICHARD A. GANT, *et al.*,

Petitioners,

v.

UNION BANK, *et al.*,

Respondents.

Memorandum in Opposition to Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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Respondent, Touche Ross & Co., respectfully prays that a writ of certiorari not issue for the purpose of reviewing the decision of the United States Court of Appeals for the Ninth Circuit entered in this proceeding on December 10, 1979. The question presented to this Court by the Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit ("Petition") concerns a litigant's right to have a civil action heard by a jury in the face of what is perceived by some to be overwhelming complexities. Petition at 2. Respondent recognizes the importance of this issue and fully anticipates that it will be resolved by this Court in the near future. However, the instant

proceeding no longer presents an appropriate factual setting in which such an important issue should be decided.

Since the Honorable Howard B. Turrentine struck the jury demands below a series of settlement agreements, most of which have been approved by the Court, have substantially reduced the complexities which led Judge Turrentine to enter his order. At the time Judge Turrentine struck the jury demands, U.S. Financial Securities Litigation, MDL Docket No. 161, consisted of 20 constituent actions, five of which were class actions brought on behalf of various classes of security holders. *See* Appendix to the Petition ("Appendix") at A - 8-9. By the time of the oral argument before the United States Court of Appeals for the Ninth Circuit settlements had reduced the litigation to ten actions, four of which were not being actively prosecuted. Appendix at A - 9-10. The six that were still active at the time of the oral argument included three class actions, each involving only one or two defendants, and three private actions. *See* Appendix at A - 10. Since that time there have been further settlement efforts which have eliminated six of those actions. Three of the private actions that were pending when the case was argued before the Ninth Circuit have been settled and those settlements have been approved by the Court.[1] The parties to the three class actions which were still pending at that time of the oral argument

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[1]*William Foote v. R. H. Walter, et al.*, Civil No. 73-508 (S.D. Cal.); *William H. Huff v. Touche Ross & Co.*, Civil No. 75-1107 (S.D. Cal.); *First National Bank of Toledo v. U.S. Financial Incorporated, et al.*, Civil No. 74-286-T (S.D. Cal.).

have agreed to a settlement in principle.[2] A final definitive agreement has not yet been signed although drafts have been exchanged among counsel and those three class actions are no longer being actively litigated. Two of the private actions pending at the time of the oral argument before the Ninth Circuit have never been actively prosecuted.[3]

These settlement efforts have caused the U.S. Financial Securities Litigation, MDL Docket No. 161 to be reduced to but two active cases, *Colonial Ventures, Inc., et al. v. Touche Ross & Co., et al.*, Civil No. 74-436 and *Colonial Ventures, Inc., et al. v. Brown, Wood, Fuller, Caldwell & Ivey, et al.*, Civil No. 77-0454. Both are private actions brought by the same plaintiffs against a total of 49 defendants. This reduction in the magnitude and breadth of this litigation has eliminated many of the factors which led to Judge Turrentine's original determination to strike the jury demand. This litigation, having been reduced to the claims of two private plaintiffs, no longer provides an appropriate factual basis for determination of the question presented.

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[2]*Societe Generale De Banque, Rentinvest, North American Fund A and ITF Fund Ltd. v. Touche Ross & Co.*, Civil No. 74-569-T (S.D. Cal.); *Societe Generale De Banque, Rentinvest, North American Fund A and ITF Fund Ltd. v. Union Bank*, Civil No. 75-1044-T (S.D. Cal.); *Societe Generale De Banque, Rentinvest, North American Fund A and ITF Fund Ltd. v. Brown, Wood, Fuller, Caldwell & Ivey and Brown, Wood, Ivey, Mitchell & Petty*, Civil No. 76-819-T (S.D. Cal.).

[3]*R. G. Stewart v. Touche Ross & Co., et al.*, Civil No. 74-452 (S.D. Cal.); *John Risque v. Robert Walter*, Civil No. 73-312 (S.D. Cal.).

By reason of these substantial changes in the factual circumstances of this litigation, since the decisions below, the Petition should be denied.

DATED: April 4, 1980.

Respectfully submitted,

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